

AMENDED IN SENATE MAY 11, 2004

SENATE BILL

No. 1368

Introduced by Senator Ortiz

February 18, 2004

An act to add Section 415.35 to the Code of Civil Procedure, relating to service of process.

LEGISLATIVE COUNSEL'S DIGEST

SB 1368, as amended, Ortiz. Substitute service of process: insurers.

Existing law provides for service of process in civil actions and proceedings by personal service or, in certain circumstances, by substitute service.

This bill would authorize substitute service upon a party's insurer, under specified circumstances, ~~with the consent of the insured or upon the plaintiff's limitation of his or her claim to the policy limits.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 415.35 is added to the Code of Civil
2 Procedure, to read:
3 415.35. (a) If an insurer has accepted coverage for a loss, in
4 lieu of personal service on a party who is insured, a copy of the
5 summons and complaint may be served by a substituted service of
6 process upon the defendant's insurer ~~or with the agent for process~~
7 ~~designated by the insurer and filed with the Department of~~
8 ~~Insurance with the Secretary of State as provided in subdivision (b)~~

1 *of Section 1502 of the Corporations Code.* Substitute service of
2 process shall be effected by delivering a copy of the summons and
3 of the complaint to the person who is apparently in charge of the
4 office, during the usual hours of the office, or by mailing a copy
5 of the summons and of the complaint, by registered mail, return
6 receipt requested, addressed to the person to be served at the
7 address of the insurer where a copy of the summons and of the
8 complaint could have been delivered. The insurer shall request that
9 the insured authorize the insurer to accept service of process on his
10 or her behalf *within five days of receipt of substitute service of*
11 *process.* The insurer's notice to the insured shall advise the insured
12 that if he or she declines to authorize the insurer to accept service,
13 he or she may be served personally at home, or at his or her place
14 of business, *and that the insurer will be obligated by law to provide*
15 *the plaintiff with the insured's last known address.*

16 (b) If the insured authorizes the insurer to accept service on his
17 or her behalf, the insurer shall respond to the complaint on behalf
18 of the insured within 30 days of the authorization. If the insured
19 does not *respond to the request or does not* authorize the insurer
20 to accept service on his or her behalf within 30 days *of the request*
21 *for authorization,* the insurer shall immediately notify the plaintiff
22 of that fact and provide the plaintiff with the last known address
23 of the insured. ~~If the insured does not respond to the insurer's~~
24 ~~request, the insurer shall immediately notify the plaintiff of that~~
25 ~~fact and provide the plaintiff with the last known address of the~~
26 ~~insured. Upon receipt of the notification and last known address,~~
27 ~~the plaintiff may elect to limit his or her claim to policy limits and~~
28 ~~provide notice to the insurer by certified mail of that election. The~~
29 ~~insurer shall accept service of process on behalf of the insured~~
30 ~~within 30 days of the notice of election. The insurer shall retain any~~
31 ~~policy defenses, including the defense of failure to cooperate. If~~
32 ~~the insured participates in discovery after commencement of the~~
33 ~~action, the plaintiff's election to limit his or her claim to policy~~
34 ~~limits shall be deemed null, and the plaintiff's demand shall no~~
35 ~~longer be limited to the policy limits.~~